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SUBJECT: ITALY'S EU PRESIDENCY: U.S./EU TASK FORCE
DISCUSSIONS

1. (U) U.S., Commission and Council officials and representatives of the Italian EU Presidency discussed a wide range of subjects, from the U.S. Passenger Name Record and Container Security Initiatives to Europe's efforts to assist Africa, at the July 18th U.S./EU task force meeting in Rome.

Task Force Participants

U.S.

Chuck English, Director, Office of European Affairs, State Department
Scott Kilner, Minister Counselor for Economic Affairs, U.S. Embassy Rome
Steve Cristina, Economic Counselor, U.S. Mission to the European Union
Marja Verloop, EU Desk Officer, State Department
Kathleen Doherty, Economic Officer, U.S. Embassy Rome (notetaker)

Italian Presidency

Sandro De Bernardin, Task Force Coordinator, Ministry of Foreign Affairs
Massimo Gaiani, Director, EU external relations division, MFA
Andrea Sama, EU External Relations division, MFA

Council Secretariat

Jim Cloos
Massimo Parnisari
European Commission

Percy Westerlund
Luc Veron
Luisa Ragher
David Tirr
Philippe Coessens (EU Delegation in Washington)

Passenger Name Record (PNR)

2. (SBU) Commission officials argued that the March U.S./Commission interim agreement was legally frail and, as such, was severely attacked by the European Parliament and Data Privacy Authorities (Article 29 Committee members). Although acknowledging that the U.S., in a good-faith effort, has taken several steps to address Commission and member states' concerns, the U.S. must do more, Commission officials remarked. Key EU demands were highlighted in Bolkestein's June 16 letter to Secretary Ridge. They included a limitation of USG use of PNR data to counter-terrorism, but not law enforcement; deletion of all PNR data defined as sensitive by EU Law once Customs and Border Police (CBP) and the Transportation Security Administration (TSA) receive it; provision of a system of passenger redress to an independent, non-USG body. Commission officials reiterated what Commissioner Patten recently told DHS Deputy Secretary Gordon England: agreement on PNR must be reached by end of July to avoid negative adequacy findings in September. The Italian Presidency underscored the political importance of this issue, domestically within EU member states and for all of the EU. It is a question of compatibility of security demands with national laws and civil liberties, GOI officials contended.

3. (SBU) English acknowledged that the talks between DepSec England and Patten revealed that fundamental differences still remain. Addressing Bolkestein's questions, the U.S. is hopeful that there might be a way forward on the limitation of scope question. The EU has proposed a scope of "terrorism and related crimes;" the U.S.' wording is terrorism and serious offenses. U.S. Customs, by its charter as a law enforcement agency, can not ignore serious felonies such as murder and drug smuggling, English stated. On sensitive data, the U.S. has moved much closer to the EU position and hopes fields for immediate deletion can be identified. Commission officials concurred. On the independent review question, the U.S. side pointed out that Nuala Kelly, Chief Privacy Officer, Department of Homeland Security, has an independent role and reports directly to both Secretary Ridge

and to Congress, depending on the issue. Regarding Kelly, Commission officials questioned whether she is sufficiently independent within DHS and queried whether her independence can be strengthened and better defined.

14. (SBU) A glaring omission in the discussion of PNR, remarked English, is the law enforcement perspective (Justice and Home Affairs - JHA). For the U.S., PNR is a question of security and we would welcome the JHA point of view. Commissions officials underscored that they are aware of the purpose of PNR and see the value of the JHA perspective, but it no way should this be used to circumvent data protection issues.

Container Security Initiative

15. (SBU) English noted that much progress has been made on reaching an agreement on CSI. He expressed hope that we can close an agreement with the Commission that would capture the spirit of the existing "Declarations of Principle" with EU member states and would allow us to move forward in a constructive manner. English also said that it was the U.S. understanding that the infringement proceedings that the Commission had begun against the member states for the DOPs would be lifted on signature of the Joint Decision.

16. (SBU) Westerlund responded that the Commission could not discuss or negotiate the lifting of the infringements. "We need a legally binding agreement," he added, "That is why the nature of the decision to be taken by the U.S.-EU Joint Customs Committee is so important. He noted that Commissioner Patten had raised this with DHS Deputy Secretary England -- who seemed to confirm that it would be legally binding. Westerlund suggested that we might need to follow up on this at the operational level.

EC Enhanced Status at UNHCR Executive Committee

17. (SBU) Making a strong pitch for the U.S. to support the EC's request for enhanced status in the UNHCR's EXCOM, Commission officials argued that the EC is a major stakeholder in UNHCR in terms of asylum issues and is a major donor itself. Officials also pointed out that the EC is a full participant or has enhanced observer status in most major fora and in UN Committees. Member states have granted the Deputy High Commissioner a mandate to negotiate for enhanced status in the UNHCR EXCOM. The Italian Presidency argued that all Member States are behind the Commission's request and do not want a confrontation with the U.S. or the UN on this issue.

18. (SBU) In response, the U.S. delegation said that the principle of no additionality must be upheld, and that U.S. policy is not to grant the EU/EC, when it is an observer, special status equivalent to those of a party.

Bio-Terrorism Act

19. (SBU) Luc Veron said that the EU shares U.S. concerns and ideas for improving traceability and security in the food chain, but continues to have grave concerns about the obligations imposed under the U.S. Bioterrorism Act of 2002. Member States have rigorous inspection and safety guidelines and there should be some recognition of and acceptance of these standards and practices. The Commission also stated that application of the obligations on food imports to the U.S. should not be more onerous than those imposed on domestic products. The Commission hopes that we can work together to minimize the effects on trade. Before the U.S. finalizes the implementing regulation, the Commission hopes to have further consultations with the U.S. The Italian Presidency emphasized that the principle of no-duplication should be respected as much as possible and that the possible long-term negative effects on trade are clearly understood.

10. (SBU) English said that the FDA has tried to ensure that it takes into account whenever possible EC comments and concerns while developing the implementing regulation, the U.S. delegation commented. The U.S. understands that the rules should be as least burdensome as possible, with the least impact on trade and as non-discriminatory as possible with regards to our trading partners. In a final comment, DG Trade Official De Laet said for the record, that the law itself -- not just the proposed implementation rules -- is restrictive on trade. He urged that we not only take every opportunity to improve the implementation but that we also use any flexibility built into the law itself to ensure minimal effects on trade.

Africa

11. (SBU) Commission and Presidency officials summarized the key aspects of the meeting of the EU Troika with Africa leaders, which took place on July 11 in Maputo, Mozambique. The key purpose of this meeting was to keep the EU's political dialog with Africa open, since the Zimbabwe question precluded the holding of an EU/Africa Summit. In Maputo, European and African leaders discussed prospects for an active partnership on security and conflict resolution. On the latter point, the Commission intends to set up a peace facilitation structure. This facility will be designed to assist and finance African peacekeeping operations by Africans. Also discussed were Africa's external debt burden, and the WTO trade round, especially on how it addresses capacity building in developing countries.

12. (SBU) The Commission also briefed on the situation in the Democratic Republic of the Congo and of High Rep Solana's visit to the Great Lakes region. They expressed appreciation for U.S. support for MONUC force expansion and a UNSC Chapter 7 resolution. Regarding the turnover of supplies by the "Artemis" force to MONUC, they said they are concerned about the transition to the Bangladeshis, since there will be no French-speaking contingent in Ituri. Regarding the political process in the Congo, Solana was encouraged that the impasse is close to being unblocked. When queried by the U.S. whether Solana and the EC believe that the warlords will lay down their arms and participate in the political process, the Council Secretariat official Jim Cloos replied that the Congolese are determined to move forward and that there is an opening for a peaceful solution. The question of arms will have to be looked at carefully, according to Cloos. The EU is in favor of some type of arms embargo, but this is a complicated issue.

13. (SBU) Solana emphasized in his talks in Africa and before the UN that the EU military mission must be terminated by September 1. Its sole intent is to bridge the peace and allow for the start of the political process. Since this is the first mission outside of Europe, the terms under which it was agreed to do so must be respected, Secretariat and Commission officials emphasized.

14. (SBU) Regarding President Bush's recent visit to Africa, the U.S. side said no decision has yet been made to put "U.S. boots on the ground" or instead, provide support to ECOWAS. On HIV/AIDs, Cloos from the Secretariat queried whether the US pledge of 15 billion is real, since the 2004 draft federal budget does not have sufficient funds to support this commitment. U.S. delegates underscored the President's commitment, noting the Congressional requirement that the US contribute no more than one third of the contributions to the Global Fund. The delegation remarked that the President himself told Commissioner Prodi that he, as the Chief Executive, will ensure that the full pledge of USD 15 billion is spent over the next five years, either through the Global Fund for HIV/AIDs or through bilateral programs.

Bilateral Investment Treaties

15. (SBU) The U.S. delegation expressed its hope that the College of European Commissioners will approve the political understanding negotiated with DG Trade on bilateral investment treaties. Commission officials said that one possible "tripping stone" remains - the issue of whether the Commission would continue to have the authority to impose restrictions on capital movements. Although the prospect of the EU resorting to such restrictions is remote, Commission officials noted, they still might need a flexible approach.

Aviation Agreement

16. (SBU) U.S. and Commission officials lauded the agreement that gives the EC the mandate to negotiate a comprehensive air services agreement with the United States. English underscored the U.S. interest in an early harvest agreement that would be followed by further negotiation on more difficult issues, particularly those that would require statutory changes. Regarding early harvest, the Commission said it is ready to listen to U.S. proposals but the EC also is committed to a full agreement. The latter is the only way to achieve real economic benefits in aviation. Veron said the first plenary will be the week of October 1 in Washington followed by a second session the week of December 8 in Brussels. He added that Commissioner de Palacio and Secretary

Mineta may meet some time after the second session and before the end of the year to take stock of progress to date.

Positive Economic Agenda (PEA)

17. (SBU) Veron noted the good results that have been achieved: the U.S./EU financial services market dialogue; Spanish clementines; U.S./EU cooperation on regulatory reform; the pending mutual recognition agreement on marine equipment well as exploratory talks on trade of organic products. He said that he hoped the Commission could go into more detail with USTR on July 29 on ideas to expand the PEA. English said the U.S. shared this positive assessment and hopes that we can strive for solutions on poultry and solving the remaining questions. All sides agreed that we need to work together to meet the broader challenges facing transatlantic and international businesses.

World Summit on the Information Society (WSIS)

18. (SBU) Commission and Presidency officials see the WSIS as an opportunity for political leaders to express confidence in using information technology for economic development and growth and to share EU experience in e-strategies. The Commission is concerned about the slow progress in the preparatory stages for the Summit, especially in bridging the gap between the developed and developing countries on these issues. The Commission views the September 12th Information Society Dialogue in Washington as an opportunity to advance before the third prepcom meeting. The U.S. also expressed concern about some of the proposals offered by developing countries on such issues as intellectual property rights. Task Force participants agreed on the need to work closely together to find common ground. Regarding the level of participation, Commission officials said European Commissioner for Enterprise and Information Society, Erkki Liikanen will definitely attend; President Prodi also is likely.

U.S./EU Summit Follow-Up: Hydrogen, Non-Pro

19. (SBU) U.S. delegates noted that the U.S. will convene in November. (The IPHE roll out is planned for November 19-21) a high-level meeting to inaugurate the International Partnership for the Hydrogen Economy (IPHE) and are pleased that the Commission will participate. In advance of the meeting, the U.S. will circulate a draft terms of reference and welcomes the Commission's comments. Commission officials said they are reviewing U.S. proposals for the IPHE partnership, and will pay particular attention to ensuring that the terms of reference are consistent with EC and member state guidelines. On another Summit issue, non-proliferation, the U.S. encouraged a joint plan for areas where the U.S./EU can work together, including in such areas as export controls and IAEA.

Trade

20. (SBU) Laying down a marker on GMOs once again, the U.S. side reiterated that the U.S. government is committed to getting access to the European market. Commission officials replied that a recent regulation adopted by the European Parliament would increase transparency in the regulatory system for GMOs and increase consumer confidence. Officials also pointed out that they have started infringement proceedings against member states that have not implemented the GMO deliberate release directive. Echoing the comment of DG Trade official de Laet on the US Bioterrorism law (para 10 above), English noted that the USG views the recently-passed laws on traceability and labeling and food and feed to be fundamentally flawed, regardless of how they might be implemented. The USG reserves its right to consider a WTO challenge on the basis of the restrictions the laws raise to trade, he added. After the recent meeting of European Parliamentarians and the Congressional Delegation led by Chairman Henry Hyde, both sides understand better the perspectives of the other, which should lay a solid foundation for future talks, Commission officials remarked.

HUMAN RIGHTS

21. (SBU) The U.S. delegation notified Commission and Presidency officials that it will sponsor a resolution on

women and political participation and will seek EU support. The U.S. also hopes the EU will help convince the Africa Group to stop blocking key resolutions on African nations such as Zimbabwe.

22. (SBU) Regarding the proposed WEOG rotation for the Human Rights Commission, the U.S. hopes a solution can be found that will allow U.S. participation on an appropriate schedule. The U.S. could not consent to the Dutch/Canadian proposal that would have left the U.S. off the board for two years.

Justice and Home Affairs

123. (U) Participants in the JHA task force meeting provided highlights of their two-day discussion (reported septel).

124. (U) This cable was cleared by EUR/ERA and USEU.

Sembler

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